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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/735,995	12/15/2003	Gerald Marron	132258 CMI-0001-100	2971
34132	7590	06/23/2004	EXAMINER	
COZEN O'CONNOR, P.C. 1900 MARKET STREET PHILADELPHIA, PA 19103-3508			JULES, FRANTZ F	
			ART UNIT	PAPER NUMBER
			3617	

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/735,995

Applicant(s)

MARRON, GERALD

Examiner

Frantz F. Jules

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-18 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 06152004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 10-12, 14, and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 10, line 4-8, the recitation of "the first and fourth points being at flangeway depths so as to avoid contact with a flange of a train wheel passing through the flangeway; wherein upon the train wheel entering the flangeway, the flange of the train wheel initially contacts the floor at a point on the first arc; and wherein upon the train wheel exiting the flangeway, the flange of the train wheel disengages the floor at a point on the third arc" is confusing as while the claims calls for the first and fourth points to be at flange depths so as to avoid contact with a flange of a train wheel passing through, the claim also recites that "the flange of the train wheel initially contacts the floor at a point on the first arc;". This is contradictory statement. Also, it is confusing as to what particular structure applicant is referring to by "a point on the first arc". Similar problem exists with claims 11-12, 14, and 18.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-2, 5-6 are rejected under 35 U.S.C. 102(b) as being anticipated by Reed (US 254,693).

Claims 1-2, 5-6

Reed discloses a railroad frog apparatus for connecting intersecting rail lines comprising a body having flangeways (C) that intersect as shown on the top surface; and at least one connection plug (S) extending from the body for connecting to a running rail; the at least one connection plug having a cross-sectional profile that is substantially identical to a cross-sectional profile of the running rail.

The railroad frog apparatus further comprising first, second, third, and fourth connection plugs extending from the body, each connection plug having a cross sectional profile that is substantially identical to a cross sectional profile of the running rail to which that connection plug will connect in accordance with claim 2.

The railroad apparatus being constructed of a single piece steel in accordance with claims 5-6.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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6. Claims 4, 7, 15-17 rejected under 35 U.S.C. 103(a) as being unpatentable over Reed (US 254,693) in view of Connelly (EP 0 602 728 A1).

Claims 4, 15-16

Reed teaches all the limitations of claims 4, 15-16 except for a railroad frog apparatus comprising at least one connecting plug where the rail is connected to the rail by a thermite weld. The general concept of providing a weld for connecting rails to a frog assembly is well known in the art as illustrated by Connelly which discloses the teaching of a thermite weld for joining rails and frogs, see page 2, lines 1-2. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reid to include the use of connecting the rail to the frog by a thermite weld as taught by Connelly in order to achieve increased fatigue resistance at the joint.

Claims 7, 17

Regarding using the method of machining for forming the apparatus as recited in claims 7, and 17, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reed to include the use method of machining for forming the apparatus in his advantageous system, as method of machining of a part is a common and everyday occurrence throughout the railroad frog apparatus design art and the specific use of machining of the railroad frog would have been an obvious matter of design preference depending upon such factors as the loading imposed on the railroad frog, the yield strength of the railroad frog material, the stress concentration factor allowable in the railroad frog; the ordinarily skilled artisan choosing the best stress profile corresponding to a particular loading imposed on the side walls which would

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most optimize the cost and performance of the device for a particular application at hand, based upon the above noted common design criteria.

7. Claims 8-9, 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reed in view of Wharton (US 211,607).

Claims 8-9, 13

Reed teaches all the limitations of claims 8-9 except for a flangeway having a convex portion on a floor defined by a first arc extending between first and second points that are at flangeway depths so as to avoid contact with a flange of a train wheel passing through the flangeway. The general concept of providing "a floor having a convex portion defined by a first arc extending between first and second points that are at flangeway depths so as to avoid contact with a flange of a train wheel passing through the flangeway depth" is well known in the art as illustrated by Wharton Jr which discloses in figs. 3-4 the use of "a floor having a convex portion (1) defined by a first arc extending between first and second points (1, 2) that are at flangeway depths so as to avoid contact with a flange of a train wheel passing through the flangeway". It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Reed to incorporate the use of "a floor having a convex portion defined by a first arc extending between first and second points that are at flangeway depths so as to avoid contact with a flange of a train wheel passing through the flangeway" in his advantageous railroad frog apparatus as taught by Wharton in order to reduce stress on the wheel of the railroad car.

Allowable Subject Matter

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8. Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 10-12, 14, and 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

Reid, Dupont, Shoemaker, Samuel et al are cited to show related railroad frog apparatus made of a single piece including connecting plugs.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano can be reached on (703) 308-0230. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Frantz F. Jules
Primary Examiner
Art Unit 3617

FFJ

June 15, 2004

FRANTZ F. JULES
PRIMARY EXAMINER

A handwritten signature in black ink, appearing to read 'Frantz F. Jules', written over the printed name and title.